

Exhibit 43

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL, et al.,

Plaintiffs,

v.

22 Civ. 384 (JSR)

MASON ROTHSCHILD,

Defendant.

New York, N.Y.
January 30, 2023
9:30 a.m.

Before:

HON. JED S. RAKOFF,

District Judge
-and a Jury-

APPEARANCES

BAKER & HOSTETLER LLP
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Opening - Mr. Warshavsky

1 artworks placed on the bags and some of these are
2 collaborations with outside artists, sometimes inside internal
3 artists. Mr. Martin will show you other Birkin bags and
4 provide you some of the descriptions of media. Finally,
5 Mr. Martin will explain to you why Hermès had concerns with
6 Mr. Rothschild's MetaBirkins project and why Hermès brought
7 this lawsuit.

8 After Mr. Martin, you'll hear from Mr. Rothschild
9 himself. Mr. Rothschild will tell you about his background.
10 You'll see that Mr. Rothschild's first creative project was
11 printing the name of art colleges on Champion T-shirts. You'll
12 hear from Mr. Rothschild that his actions were not authorized
13 by those schools, such as Parsons which is on your screen. And
14 you will hear that Parsons at that time sent Mr. Rothschild a
15 cease and desist letter.

16 Now, you're going to hear that word a few times, cease
17 and desist letter. That means different things to different
18 people. Generally, a cease and desist letter is something that
19 is sent from somebody who thinks they own a right to someone
20 else who they think may have violated the right, asking them to
21 cease from that conduct, and to desist from doing it in the
22 future. That's why it is called, in shorthand, a cease and
23 desist.

24 You will see that Mr. Rothschild explained to two of
25 his business associates that he doesn't think people realize

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Opening - Mr. Warshavsky

1 how much you can get away in art by saying "in the style of."
2 You will hear that Mr. Rothschild's biggest project through at
3 least the first half of 2021 was called Baby Birkin. That NFT
4 project was an animation of a fetus growing inside a Birkin.
5 You will hear that was a financially lucrative project for
6 Mr. Rothschild.

7 Now, you're also going to hear that Mr. Rothschild
8 didn't create these or generate these images himself. Instead,
9 Mr. Rothschild hired someone named Mark Durham, you'll see here
10 referred to as Mark Design. Mark Design generated the images
11 for all of Mr. Rothschild's NFT projects through the
12 MetaBirkins. In fact, you'll hear the MetaBirkins were created
13 with software called Houdini, the same software used for prior
14 NFT projects by Mr. Rothschild.

15 You will see communications where Mr. Rothschild
16 actually asked Mark Design what the project software is, saying
17 he wanted to learn how to use it. The text you're seeing
18 occurred while Mark Design was actually generating the images
19 for the MetaBirkins here. You'll see that Mr. Rothschild, in
20 trying to entice Mark Design to participate in the MetaBirkins
21 projects writes, We are sitting on a gold mine. I'm a
22 marketing king.

23 Now, the name MetaBirkins was not adopted at the
24 beginning of this project. You'll see during this process,
25 Mr. Rothschild repeatedly referred to his NFT projects as

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Opening - Mr. Warshavsky

1 You will also see that Mr. Rothschild told his friend
2 and sometimes collaborator Eric Ramirez that Hermès might
3 partner with him on the MetaBirkins and that he was
4 negotiating.

5 You will see that when Mr. Rothschild was exploring a
6 collaboration for the still-unnamed Birkin project, one
7 potential collaborator asks whether it is official with Birkin
8 and Mr. Rothschild responded, "Pushing for it."

9 You will see that in talking to business associates
10 Mr. Rothschild indicated that he had contacted Vogue, who would
11 help him with Hermès, and then with the same business
12 associates said that he planned to work with Sotheby's to
13 connect him to Hermès.

14 You will see that there are other times that
15 Mr. Rothschild suggested he was either talking to or
16 negotiating with Hermès. You will also hear that none of these
17 discussions or negotiations ever happened, not one.

18 Now, until this time, Mr. Rothschild was calling this
19 project Birkins. You will see that on October 29, 2021, while
20 Mark Design was working on completing the images,
21 Mr. Rothschild took to Twitter and teased one of the bags and
22 ran a contest. And here he says, "Releasing 50 one-of-a-kind
23 Birkins of varying rarity. The collection needs a name. Share
24 this post and reply with your suggestion. Best suggestion gets
25 gifted a Birkin."

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Opening - Mr. Warshavsky

1 And you will see that various people had submissions.

2 A little later on that same day, October 29, someone
3 named McKissa responded with seven suggestions. The fourth was
4 MetaBirkin.

5 Now we know that Mr. Rothschild eventually adopted the
6 MetaBirkin name. We also know that the MetaBirkin collection
7 was released about a month later, on December 2, 2021. And on
8 December 3, 2021, we see McKissa asking Mr. Rothschild whether
9 she would be getting an NFT because she came up with the name.
10 Mr. Rothschild will testify that he did not give McKissa the
11 NFT because he came up with the MetaBirkin name himself. Also
12 in this contest you will see that another user responded with a
13 suggestion not your mom's Birkin.

14 And you will see that on Mr. Rothschild's MetaBirkin
15 website he used the slogan, "Not your mother's Birkin" to
16 advertise the MetaBirkins on his website. Mr. Rothschild will
17 also testify that he did not provide that user with any of his
18 Birkins or MetaBirkins.

19 Mr. Rothschild's promotion also included issuing a
20 blog post, posting a blog post on November 22, where he
21 explained that he knew he had to try and recreate the same
22 exclusivity and demand of Hermès' most famous handbag. His
23 goal was for MetaBirkins to double as an investment for holders
24 like the real world holy grail handbag.

25 Mr. Rothschild took to social media, including

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Opening - Mr. Warshavsky

1 Loo, that a number of people contacted him because they thought
2 that Mr. Rothschild's project was affiliated with Hermès.

3 You will also see how the MetaBirkins have fared. You
4 will see that most of the highest prices came before the shroud
5 was lifted. You will see that the prices went down until one
6 of the influencers pumped -- or shilled, or whatever we are
7 going to call this -- the MetaBirkins, at which time the prices
8 climbed up.

9 Then you will see that after the Financial Times did
10 an article saying that Hermès was not involved with the
11 MetaBirkins, the prices started to diminish.

12 You will further see that the prices continued to
13 diminish after Mr. Rothschild discussed Hermès's cease and
14 desist letter and then as he discussed this lawsuit. And in
15 the end Hermès will argue that Mr. Rothschild violated Hermès
16 trademark rights, or Mr. Rothschild's own profit.

17 Hermès will ask you to find that by selling and
18 promoting the MetaBirkins NFTs, Mr. Rothschild engaged in
19 trademark infringement, dilution, and unfair competition and
20 ask that you return a verdict in Hermès' favor.

21 Thank you for giving me your attention.

22 THE COURT: All right. Thank you very much.

23 Now we will hear from defense counsel.

24 MR. MILLSAPS: Your Honor, if I may, would it be okay
25 for me to speak from this point, so I can see the screen along

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1 with the jurors?

2 THE COURT: That's fine.

3 MR. MILLSAPS: Thank you.

4 Thank you, your Honor. Good morning.

5 Good morning, members of the jury.

6 I Just want to introduce myself again and
7 Mr. Rothschild's team here. I am Rhett Millsaps, from the law
8 firm Lex Lumina, here on behalf of the artist Mason Rothschild.
9 With me are my cocounsel, Jon Harris. You will be seeing him
10 as well from the law firm of Harris, St. Laurent & Wechsler.

11 Also with us are Monica Delgado, who works with his
12 firm; Ashley Robinson, also who works with his firm; Adam
13 Oppenheim, also with the Harris firm; and then my partner at
14 Lex Lumina, Chris Sprigman.

15 And, of course, this is the defendant, Mr. Rothschild.

16 Mason, would you please stand up for a minute.

17 Members of the jury, Mr. Rothschild is an
18 up-and-coming artist and an entrepreneur, and he's here today
19 to stand up for himself and for artistic freedom. And you will
20 be hearing directly from him on the witness stand.

21 Now, you just heard Hermès' version of this dispute
22 and its view of Mr. Rothschild as the plaintiff. Hermès gets
23 to go first throughout this case. I will ask you to keep your
24 minds open until you have heard all of the evidence and from
25 all of the witnesses, including Mr. Rothschild.

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1 And Mr. Rothschild and our team and I am sure everyone
2 in the courtroom today would very much like to thank you for
3 being here. We know that you are putting in a lot of effort
4 and time to serve as juror in this case, and we are grateful
5 for that.

6 I just would like to show you again the holy object
7 that brings us all here today in the courtroom.

8 Mr. Warshavsky, may I borrow this bag?

9 MR. WARSHAVSKY: Sure.

10 MR. MILLSAPS: Thank you.

11 Hermès was kind enough to let me borrow this to show
12 it to you. This is Hermès' most popular product, but not
13 everyone can get one. Not only is there a waitlist to buy one,
14 but the cheapest one of these bags is going to set you back
15 about \$12,000. Some of these bags go for as much as \$200,000.

16 And you heard Mr. Warshavsky say Hermès has sold over
17 a billion dollars of these bags in the last ten years in the
18 U.S. alone, about \$100 million worth of these bags every year
19 for the last ten years.

20 You also heard Mr. Warshavsky say that there are a lot
21 of cultural references to the Birkin bag in television shows
22 like Sex and the City, Gilmore Girls, and films and music that
23 you may have heard from Cardi B or Beyoncé.

24 That is because -- and Hermès is very proud of this --
25 the name Birkin has transcended its status as a mere trademark

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1 indicating the source of goods, and Birkin has become a
2 cultural symbol of rarefied wealth and privilege in our
3 society.

4 Now, as you can see here, it is a leather purse, a
5 very fancy French leather purse, but it is a purse. You can
6 carry your wallet and your keys in it.

7 Ashley, would you please put the MetaBirkins on the
8 screen.

9 The images that you see on your screen now are
10 MetaBirkins. They're flat digital pictures of imaginary Birkin
11 bags fully covered in cartoonish colorful fur sitting on a
12 white pedestal. During this trial you will hear
13 representatives of Hermès admit that Hermès has never made or
14 sold anything that looks like this. It came out of
15 Mr. Rothschild's imagination.

16 And you will learn something obvious, but something
17 very important in this case. MetaBirkins exist only on your
18 screen in two dimensions. You can't carry them to the store.
19 You can't put your keys or your tiny dog in them. You can't
20 even do any of those things with a MetaBirkin in a digital
21 world, like a video game. It is a flat digital picture like a
22 painting connected to an NFT.

23 Now, you will be hearing a lot about NFTs during this
24 trial. An NFT is just a snippet of code on a public internet
25 register called a blockchain. That's so everyone can trace and

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1 see when an NFT was created and who owns it now and what its
2 ownership history has been.

3 The easiest way to think of an NFT is like a deed or a
4 certificate of title, but it's digital. It's called a token
5 because it represents something else, just like a deed to a
6 house represents the house or a certificate of title represents
7 the car that's owned.

8 You will see that an NFT, like a deed, doesn't have
9 any inherent nature or value by itself. An NFT derives its
10 value from whatever it is attached to. Just like the deed to a
11 house would be meaningless if the house didn't exist.

12 You are going to hear that over the last few years
13 NFTs have become an exciting new way for artists to sell their
14 work and build audiences and engage with their communities.

15 A little over a year ago, Mr. Rothschild came up with
16 the idea to make a series of digital pieces of art depicting
17 imaginary fur covered Birkin bags and to sell them with NFTs.
18 He decided to call these artworks MetaBirkins.

19 Now, before I go any further, I just want you to
20 understand why we are all here today. Hermès, this
21 multibillion dollar fancy French purse maker, has sued
22 Mr. Rothschild because Hermès says that these MetaBirkins NFT
23 artworks hurt its coveted Birkin brand.

24 The evidence is going to show you otherwise. This
25 really is a case about a multibillion dollar corporation trying

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1 to punish Mr. Rothschild because they don't like his art, and
2 they are scared of what it might show about luxury consumer
3 culture.

4 Now, there are three key facts in this case.

5 Fact one: The MetaBirkins on your screen are art, and
6 Mr. Rothschild had an artistic intention in using the name
7 MetaBirkins for this series of NFT artworks. You can see the
8 name MetaBirkins describes what you see on your screen. They
9 are artworks depicting imagery Birkin bags.

10 Mr. Rothschild also wanted to make money with his art.
11 Hermès will want you to focus only on the money part and ignore
12 the art part. But you will see from the evidence that both of
13 those things were true at the same time. They are two sides of
14 the same coin. Mr. Rothschild wanted to make art and he wanted
15 to make money and a name for himself with his art. What you
16 see on your screen is art.

17 Fact two: Mr. Rothschild wanted the credit for
18 MetaBirkins. He set up a MetaBirkins website and social media
19 accounts that identified him as the creator of MetaBirkins. He
20 identified himself as the creator of MetaBirkins in media
21 interviews.

22 He reached out to some reporters to correct them when
23 they mistakenly wrote articles saying that Hermès put out
24 MetaBirkins. And maybe more important than the evidence that
25 you will see is what you won't hear. You won't see any

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1 evidence that Mr. Rothschild ever told anyone that MetaBirkins
2 came from Hermès, because he wanted the credit for his own
3 artwork.

4 Fact three: Consumers who pay tens of thousands of
5 dollars for luxury handbags like Birkin bags or NFT art were
6 not confused about where MetaBirkins came from. Hermès own
7 evidence is going to show this to you.

8 Hermès is going to try to make a big deal out of the
9 fact that Mr. Rothschild hoped to make money with MetaBirkins.
10 They are going make a big deal out of the fact that he put a
11 lot of effort into trying to pump up the price and the
12 excitement for his MetaBirkins art. They are going to make a
13 big deal about the fact that he told his associate that he
14 hoped he could get Hermès to collaborate with him.

15 Mr. Rothschild doesn't dispute any of that. It is all
16 true. It is perfectly legal for people to make money with
17 their art. In fact, the First Amendment of our Constitution
18 protects that right for every American. And you will hear from
19 Hermès' own witness that it is not unusual for artists to
20 approach Hermès to pitch a collaboration with them, because
21 they want to work with Hermès.

22 We are here today because trademark rights are limited
23 by the First Amendment, which protects artistic creations like
24 Mr. Rothschild's MetaBirkins. The First Amendment's guarantee
25 of freedom of speech and expression protects the right for any

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1 of us to depict and comment on the things that we see in the
2 world around us, including the trademarked products and brands
3 that bombard us everywhere we look, especially products that
4 have become significantly and widely discussed symbols in our
5 culture, like the Birkin bag.

6 Also -- and I will talk more about this later --
7 nobody was confused about what they were buying when they
8 bought the MetaBirkins NFTs and artworks. I would like to talk
9 to you for a minute about Mr. Rothschild.

10 Who is Mason Rothschild? During this trial you are
11 going to learn a good bit about Mr. Rothschild. I think that
12 you will learn that there is a lot to like about him. But you
13 will see some of Mr. Rothschild's flaws as well else a human
14 being as you can see sitting here. You will learn that
15 Mr. Rothschild is a clever, passionate, sometimes even funny
16 guy who has lots of ideas, lots of ambition, and he works hard
17 to bring his ideas into reality.

18 Like many people, he isn't just one thing. He is an
19 artist, he is an entrepreneur, he's a businessman, he is a
20 clever marketing guy. He's also a fiance and a devoted dog
21 dad.

22 You will see that he cares a lot about using his art
23 to draw attention to social issues that he cares about. You
24 will also learn that he sometimes exaggerates and embellishes
25 the truth, especially which he's promoting himself and his

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1 projects.

2 But you will see from the evidence that Mr. Rothschild
3 is straight when it comes to the important things. Like paying
4 back around a \$100,000 investment when the deal fell through.

5 You are going to learn some more things about
6 Mr. Rothschild that will help you understand what shaped him
7 and his artistic outlook. Despite his name, Mr. Rothschild was
8 not handed anything. His birth name is Sonny Alexander
9 Estebal, but he adopted the name Mason Rothschild when he was a
10 teenager for reasons that you will hear him explain.

11 He is a first-generation American, born in Pasadena
12 and raised in San Mateo, California. His mom came to the U.S.
13 from the Philippines; his dad came from Colombia.

14 He graduated from high school at the age of 16, and he
15 took classes at a local community college for a year and some
16 online classes at the University of San Francisco in business
17 and marketing. But Mr. Rothschild never finished college.
18 He's mostly self-taught in both business and art.

19 On the business side, Mr. Rothschild started out
20 working in retail, first for a couple of small streetwear
21 brands and then for bigger companies in the luxury fashion
22 space, like Yves Saint Laurent and Dior. He wanted to get into
23 other things while he was working in retail, so he started
24 doing some consulting work around digital marketing and social
25 media for various companies.

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1 THE WITNESS: Is a what?

2 THE COURT: Image.

3 THE WITNESS: MetaBirkins, no, is the name of the
4 smart contract.

5 THE COURT: It's the name of the smart contract.

6 So we saw earlier images of Birkin bags covered in
7 fur.

8 THE WITNESS: Um-hmm.

9 THE COURT: What do you call those?

10 THE WITNESS: That's the image file connected to the
11 MetaBirkins NFT.

12 THE COURT: OK. So the image file is something that
13 is offered for sale; yes?

14 THE WITNESS: That is the visual representation of
15 what is being offered for sale is the actual token, which to
16 all of us wouldn't really mean anything.

17 THE COURT: I think my question was a yes-or-no
18 question, but OK.

19 So if you go on the relevant website and you want to
20 purchase exclusive use of this image, that's what you
21 ultimately are getting for your money, right?

22 THE WITNESS: That is your expectation, yes.

23 THE COURT: I think the answer to that is yes, right?
24 Can you answer a question yes or no?

25 THE WITNESS: Yes, I can.

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1 THE COURT: So is the answer to my question yes?

2 THE WITNESS: No.

3 THE COURT: No.

4 Then what's the right answer?

5 THE WITNESS: At issue there is the image can actually
6 change in the future.

7 THE COURT: So you've heard of something called money;
8 yes?

9 THE WITNESS: Yes.

10 THE COURT: When a person exchanges money for certain
11 rights respecting a MetaBirkins image, what they are getting is
12 the exclusive right to have that image available and maybe to
13 the originator, true?

14 THE WITNESS: True.

15 THE COURT: Now we're making progress.

16 And if the person who then purchased that opportunity
17 wants to sell it, the originator then gets, pursuant to the
18 smart contract, a percentage of the sale, true?

19 THE WITNESS: Yes.

20 THE COURT: OK. Go ahead, counsel.

21 BY MR. FERGUSON:

22 Q. What is a minting contract in the context of a smart
23 contract -- in the context of an NFT?

24 I'm sorry. Let me start that again.

25 What is a minting transaction in the context of an

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1 NFT?

2 A. So the term minting is used to refer to the initial sale of
3 the NFT.

4 Q. Can you look at Exhibit 65.

5 Have you seen Exhibit 65 before today?

6 A. Yes, I have.

7 Q. Can you identify it?

8 A. It is a screenshot that I took off of the Etherscan.io site
9 that shows the transaction-level details for the very first
10 MetaBirkins NFT that was made.

11 MR. FERGUSON: I offer Exhibit 65 into evidence.

12 MR. MILLSAPS: No objection, your Honor.

13 THE COURT: Received.

14 (Plaintiff's Exhibit 65 received in evidence)

15 Q. Is there particular information on this record that you
16 focused on in your analysis?

17 A. I was looking at the transaction and the value.

18 Q. And what do these entries tell you?

19 A. So this tells me the wallet, that starts 0X278 minted the
20 very first MetaBirkins NFT, number 0, and they paid .1 ether,
21 which at the time was valued at \$451.48.

22 Q. Can you explain what is shown in this slide?

23 A. Yes. This is a slide that represents the date timestamp
24 for each of the NFTs, so I could understand the minting
25 pattern.

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1 Q. Focusing on the horizontal axis, what information is in
2 that axis?

3 A. That's the date and the time.

4 Q. And what's in the vertical axis?

5 A. That's the NFT number. So starting at zero and ending at
6 number 99, the final MetaBirkins NFT that was minted.

7 Q. And what do each of the blue circles in this chart
8 indicate?

9 A. One of the NFTs being minted.

10 Q. I would like to -- can you look at what's been marked as
11 Exhibit 67.

12 Can you identify there document for us?

13 A. Yes.

14 Q. What is that?

15 A. This is a screenshot that shows the first resale of a
16 MetaBirkins NFT.

17 Q. And is this one of the documents you relied on in forming
18 your opinions?

19 A. Yes.

20 MR. FERGUSON: I would like to offer Exhibit 67 into
21 evidence.

22 MR. MILLSAPS: No objection.

23 THE COURT: Received.

24 (Plaintiff's Exhibit 67 received in evidence)

25 Q. In looking at this record, what was the particular

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1 information that you focused on?

2 A. The transaction value, primarily.

3 Q. And what information do you take from these entries?

4 A. So I could see that the first resale occurred shortly after
5 the minting process began. It was number 64. MetaBirkin
6 number 64, that resold for ten ETH, which at the time was
7 \$42,193.20.

8 Q. I would like you to look at Exhibit 55.

9 Can you explain to -- have you seen Exhibit 55 before
10 today?

11 A. Yes.

12 Q. What is it?

13 A. 55 is my entire report, initial report, that was written
14 for counsel.

15 Q. OK. And does this chart appear in Exhibit 55?

16 A. Yes. It's appendix C in that exhibit.

17 Q. OK. What is the information in appendix C?

18 A. This is a spreadsheet that I put together to track each
19 resale for all three marketplaces so I could come one total
20 amounts of the resale value and the royalties.

21 Q. And how did you create Exhibit C?

22 A. All from data that I downloaded off of OpenSea.

23 Q. So looking back at Exhibit 67, would this be an example of
24 the record that you used to drive this compilation?

25 A. Yes.

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1 MR. FERGUSON: I offer Exhibit 55 into evidence.

2 MR. MILLSAPS: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. What is shown in this next slide?

5 A. This is a chart that I put together that showed all of the
6 resales of the MetaBirkins along with the dollar value amount
7 at the time that transaction occurred.

8 Q. And is this chart derived from the compilation that you
9 created that was Exhibit C to your report?

10 A. That's correct.

11 Q. What does the horizontal axis represent?

12 A. They are the unique date timestamps for each resale.

13 Q. And what does the vertical axis represent?

14 A. The value in U.S. dollars of those resales.

15 Q. Now, resales were in ETH, is that correct?

16 A. That's correct.

17 Q. So how did you calculate the U.S. dollar amount for these
18 resales?

19 A. I didn't calculate it. I took it directly off of the
20 Etherscan.io site that does the conversion for me.

21 Q. And what was the information of the Etherscan.io record?

22 A. That would tell me both the ETH value and then the value in
23 U.S. dollars at that date and time.

24 Q. And so each of these blue circles in this chart, what does
25 each blue circle represent?

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1 A. One of the retails.

2 Q. And then looking at the green line that I've just added to
3 that chart, what does that green line represent?

4 A. That represents the timeline while the minting was going
5 on, so I could see when the minting started and ended. So I
6 could compare whether resales were occurring at the same time
7 the minting process was occurring.

8 Q. When the MetaBirkins NFTs were created, were they linked to
9 any digital file?

10 A. Not initially, no.

11 Q. At the time that the minting transactions began, were they
12 linked to a digital file?

13 A. Yes, they were.

14 Q. And what was the digital file they were linked to?

15 A. They were linked to a covered bag image that had some
16 animation that said future home of MetaBirkins.

17 Q. And how did you determine that?

18 A. One of the methods in the smart contract allows the
19 contract owner to set the repository, the point to the
20 repository for those images. So I found the transaction
21 related to that setting and navigated to that repository to
22 look at what the images were at that time.

23 Q. And can you show me, can you describe to me what is shown
24 in this slide?

25 A. The top line is the actual transaction that set the pointer

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1 to where the image files could be found and navigating to that,
2 you are arrive -- I could find this animated GIF file that
3 represented what they would have looked like at the beginning
4 of the minting process.

5 Q. And so when the first three minting transactions took
6 place, individuals were buying MetaBirkins NFTs, is that
7 correct?

8 A. So this was the image linked to the original, the first
9 three minted MetaBirkins, yes.

10 Q. What image were those first three minters purchasing?

11 A. It would have been linked to this image right here.

12 (Counsel confer)

13 Q. And can you look at Exhibit 81.

14 Can you tell us what Exhibit 81 is?

15 A. It's just marked GIF file. I'm assuming that is the
16 animated GIF we're seeing for future home of a MetaBirkins.

17 MR. FERGUSON: I offer Exhibit 81 into evidence.

18 MR. MILLSAPS: No objection.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 81 received in evidence)

21 Q. Did there come a time when the image linked to MetaBirkins
22 changed?

23 A. Yes.

24 Q. Can you describe for us what is shown in this slide?

25 A. After the first three MetaBirkins were minted, I saw a

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1 series of transactions that were setting the base URI so this
2 would, prior to the fourth being minted, so this would have
3 been the last one which set a new repository navigating to that
4 new repository. This is the image that was there at the time,
5 this JPEG image.

6 Q. And is this image on the blockchain?

7 A. No, it's not.

8 Q. Who decides what image the NFT is going to point to?

9 A. That's controlled by the smart contract owner.

10 Q. So the individual purchasing the NFT doesn't have control
11 over how that pointer is going to function, is that correct?

12 A. That's correct.

13 Q. And could you look at Exhibit 83 in your folder.

14 Can you identify that?

15 A. That is the covered bag image that was set after the third
16 NFT was minted.

17 MR. FERGUSON: I offer Exhibit 83 into evidence.

18 MR. MILLSAPS: No objection.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 83 received in evidence)

21 Counsel, find a spot in the next five minutes to break
22 for the day.

23 MR. FERGUSON: Five minutes to break?

24 THE COURT: Find a time in the next five minutes to
25 break for today.

N1UsHER6

Mentzer - Direct

1 MR. FERGUSON: OK. Thank you.

2 BY MR. FERGUSON:

3 Q. And did there come a time when the image changed, the image
4 linked to the NFT MetaBirkins changed again?

5 A. Yes.

6 Q. And can you tell us what is shown in this slide?

7 A. That top transaction was another pointer to a new
8 repository for the MetaBirkins NFT that happened shortly after
9 the minting process was completed. And at that time, the
10 unveiling of the individual MetaBirkins happened.

11 Q. And can you look at Exhibit 84.

12 And can you identify that for us?

13 A. Yes. That would be one of the images linked to one of the
14 specific MetaBirkins NFTs.

15 MR. FERGUSON: I offer Exhibit 84 into evidence.

16 MR. MILLSAPS: No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit 84 received in evidence)

19 Q. Can you describe for us what is shown in this slide?

20 A. It's a combination of the earlier slide that showed the
21 minting history with date timestamp and what the image would
22 have looked like at any given point in time along that history.

23 Q. Using the slide as a reference, how many MetaBirkins were
24 sold using the future home of a MetaBirkins?

25 A. There were three that were sold under that original image.

N1UsHER6

Mentzer - Direct

1 Q. And how many were sold under the covered veiled image?

2 A. The remaining 97.

3 Q. Were any minting rights sold under the bag image?

4 A. No.

5 Q. Can you describe to us what is shown in this chart?

6 A. This is the same chart we saw earlier that was the resales
7 with the addition of when the actual digital files changed. So
8 the red indicated digital file there would have been the
9 animated GIF image of the covered bag, the yellow would be the
10 covered bag itself, and then the blue would be the unveiling
11 event and when the individual MetaBirkins was revealed.

12 Q. So looking at this chart, the resales that took place to
13 the left of the blue line, what was the image linked to the
14 MetaBirkins when those resales took place?

15 A. They were buying a covered bag image.

16 Q. And is it possible today that the digital filed linked to
17 the MetaBirkins could change again?

18 A. It could, yes.

19 Q. Who has the ability to do that?

20 A. The MetaBirkins contract owner.

21 Q. Anybody else?

22 A. No.

23 MR. FERGUSON: Your Honor, I'm kind of at a logical
24 breaking point.

25 THE COURT: OK. Ladies and gentlemen, we are off to a